

1 28 U.S.C. § 1915A(b); 42 U.S.C. § 1997e(c)(1). In screening such a
2 complaint, the Court must construe the allegations of the complaint
3 liberally and must afford the plaintiff the benefit of any doubt. See
4 Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir.
5 1988). A *pro se* litigant must be given leave to amend his or her
6 complaint unless it is absolutely clear that the deficiencies of the
7 complaint cannot be cured by amendment. *Id.*; Noll v. Carlson, 809 F.2d
8 1446, 1448 (9th Cir. 1987).

9
10 **ALLEGATIONS OF THE COMPLAINT**
11

12 Plaintiff is currently incarcerated at the Ironwood State Prison.
13 (Complaint at 1.) His claims arose while he was a pretrial detainee in
14 the custody of the Los Angeles County Sheriff's Department ("Sheriff's
15 Department"). (*Id.*) The Sheriff's Department is the sole defendant.
16 (*Id.*)
17

18 Plaintiff alleges that, on June 11, 2009, at the Antelope Valley
19 courthouse in Lancaster, a deputy performing a body search hit him three
20 times in the groin area. (Complaint at 1, 2.)¹ When plaintiff asked
21 why he had been hit, the deputy told him to shut up and then put
22 plaintiff's hands behind his back and squeezed his fingers. (*Id.*)
23 Deputies started hitting plaintiff in the face and head with a
24 flashlight; one deputy hit plaintiff in the face with a fist; another
25 deputy grabbed plaintiff's arm, hit it with a flashlight, and broke it;
26

27 ¹ Plaintiff used the space provided for describing prior federal
28 lawsuits to set forth the facts supporting his claims in this action.
(See Complaint at 1.)

1 and plaintiff was pepper-sprayed and shot with a taser. (*Id.* at 1, 5.)

2
3 Plaintiff did not receive adequate medical care for his injuries,
4 and it was ten months before he received surgery for his arm.
5 (Complaint at 1.) Initially, jail personnel did not believe that
6 plaintiff's arm was broken, and he did not receive a cast for five days.
7 (*Id.* at 5.) Plaintiff's arm would not heal and, ultimately, physicians
8 had to insert a titanium plate into it. (*Id.* at 1, 5.) Plaintiff's
9 face was pink from pepper spray for days, his head hurt from being hit
10 with so many flashlights, and his wrist hurt from handcuffs. (*Id.* at
11 5.) Plaintiff's head and wrist remain painful, and he consequently has
12 to take pain medication. (*Id.*)

13
14 Plaintiff contends that deputies used excessive force against him
15 when there was no reason to use any force at all. (Complaint at 1, 5.)
16 He further contends that he did not receive adequate medical care. (*Id.*
17 at 1.) He seeks damages. (*Id.* at 6.)

18 19 DISCUSSION

20 21 **I. PLAINTIFF FAILS TO STATE A CLAIM AGAINST THE SHERIFF'S DEPARTMENT** 22 **FOR EXCESSIVE FORCE.**

23
24 Plaintiff has not sued the deputies who beat him, either as named
25 defendants or as Doe defendants. The sole defendant named in the
26 Complaint is the Sheriff's Department.

27
28 To allege a Section 1983 claim against an individual defendant, a

1 plaintiff need only allege a constitutional deprivation inflicted on him
2 by that defendant. To allege a Section 1983 claim against a local
3 governmental entity such as the Sheriff's Department, however, more is
4 needed. Plaintiff must allege a constitutional deprivation *and* a
5 policy, custom, or practice of the municipality that was the "moving
6 force" of the constitutional deprivation. Monell v. Department of
7 Social Services, 436 U.S. 658, 694-95, 98 S. Ct. 2018, 2037-38 (1978);
8 Villegas v. Gilroy Garlic Festival Ass'n, 541 F.3d 950, 957 (9th Cir.
9 2008); Galen v. County of Los Angeles, 477 F.3d 652, 667 (9th Cir.
10 2007).

11
12 A local governmental entity such as the Sheriff's Department "may
13 not be sued under § 1983 for an injury inflicted solely by its employees
14 or agents. Instead, it is when execution of a government's policy or
15 custom, whether made by its lawmakers or by those whose edicts or acts
16 may fairly be said to represent official policy, inflicts the injury
17 that the government as an entity is responsible under § 1983." Monell,
18 436 U.S. at 694, 98 S. Ct. at 2037-38. Thus, a local governmental
19 entity is not liable for the acts of its employees unless "the action
20 that is alleged to be unconstitutional implements or executes a policy
21 statement, ordinance, regulation, or decision officially adopted or
22 promulgated by that body's officers" or unless the alleged
23 constitutional deprivation was "visited pursuant to a governmental
24 'custom' even though such a custom has not received formal approval
25 through the body's official decisionmaking channels." *Id.* at 690-91,
26 98 S. Ct. at 2035-36.

27
28 Here, plaintiff's allegations are sufficient to allege a

1 constitutional deprivation, *i.e.*, an excessive force claim under the
2 Fourteenth Amendment's Due Process Clause.² The Complaint, however, is
3 devoid of allegations regarding any official policy, custom, or practice
4 pursuant to which the Sheriff's deputies inflicted the allegedly
5 excessive force. See Monell, 436 U.S. at 690-91, 694, 98 S. Ct. at
6 2035-36, 2037-38; Karim-Panahi, 839 F.2d at 624. Plaintiff, therefore,
7 fails to state an excessive force claim against the Sheriff's
8 Department.

9
10 Accordingly, plaintiff's excessive force claim against the
11 Sheriff's Department must be dismissed.

12
13 **II. PLAINTIFF FAILS TO STATE A CLAIM AGAINST THE SHERIFF'S DEPARTMENT**
14 **FOR INADEQUATE MEDICAL CARE.**

15
16 Plaintiff also asserts a claim against the Sheriff's Department for
17 inadequate medical care. To state such a claim, plaintiff must allege
18 that he was provided with constitutionally inadequate medical care
19 pursuant to an official policy, custom, or practice of the Sheriff's
20 Department. See Monell, 436 U.S. at 690-91, 694, 98 S. Ct. at 2035-36,
21 2037-38; Karim-Panahi, 839 F.2d at 624. The Complaint contains no
22 allegations regarding any policy, custom, or practice of the Sheriff's
23 Department with respect to medical care. Thus, plaintiff's inadequate
24

25 ² Plaintiff alleges that he was a pretrial detainee at the time
26 of the events in question. Thus, his claims arise under the Due Process
27 Clause. See Graham v. Connor, 490 U.S. 386, 395 n.10, 109 S. Ct. 1865,
28 1871 n.10 (1989) ("the Due Process Clause protects a pretrial detainee
from the use of excessive force that amounts to punishment") (citing Bell
v. Wolfish, 441 U.S. 520, 535-39, 99 S. Ct. 1861, 1871-74 (1979)).

1 medical care claims fails for his reason alone.

2
3 In addition, plaintiff has not adequately alleged a constitutional
4 deprivation. A prisoner asserting a Section 1983 claim for denial of
5 medical care must show "acts or omissions sufficiently harmful to
6 evidence deliberate indifference to serious medical needs."³ Estelle
7 v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 292 (1976). A serious
8 medical need exists if failure to treat the condition could result in
9 further significant injury or the unnecessary and wanton infliction of
10 pain. McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled*
11 *on other grounds by* WMX Technologies, Inc. v. Miller, 104 F.3d 1133 (9th
12 Cir. 1997)(*en banc*). Deliberate indifference requires that defendants
13 purposefully ignore or fail to respond to the prisoner's pain or medical
14 need. McGuckin, 974 F.2d at 1060. Deliberate indifference "may appear
15 when prison officials deny, delay or intentionally interfere with
16 medical treatment, or it may be shown in the way in which prison
17 physicians provide medical care." *Id.* at 1059.

18
19 A showing of medical malpractice or negligence is insufficient to
20 establish deliberate indifference. Toguchi v. Chung, 391 F.3d 1051,
21 1060 (9th Cir. 2004). "[A] complaint that a physician has been
22 negligent in diagnosing or treating a medical condition does not state
23 a valid claim of medical mistreatment under the Eighth Amendment.

24
25

³ Although plaintiff's claim for inadequate medical care during
26 his pretrial detention arises under the Due Process Clause of the
27 Fourteenth Amendment, the Eighth Amendment serves as a benchmark for
28 evaluating the claim. Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir.
1998). Thus, the standards set forth in Estelle v. Gamble and Ninth
Circuit cases applying Estelle are applicable here.

1 Medical malpractice does not become a constitutional violation merely
2 because the victim is a prisoner." Estelle, 429 U.S. at 105-06, 97 S.
3 Ct. at 292.

4
5 If medical treatment is delayed rather than denied, the delay
6 generally amounts to deliberate indifference only if it caused further
7 harm. Wood v. Housewright, 900 F.2d 1332, 1335 (9th Cir. 1990); Shapley
8 v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir.
9 1985)(*per curiam*). Moreover, a mere difference of opinion between an
10 inmate and medical staff, or among medical staff, regarding appropriate
11 medical treatment is generally insufficient to constitute deliberate
12 indifference. See Toguchi, 391 F.3d at 1058; Jackson v. McIntosh, 90
13 F.3d 330, 332 (9th Cir. 1996); Sanchez v. Vild, 891 F.2d 240, 242 (9th
14 Cir. 1989). A prisoner asserting an Eighth Amendment claim against his
15 physician must show that the course of treatment the physician chose was
16 medically unacceptable under the circumstances, and that the physician
17 chose it in conscious disregard of an excessive risk to the plaintiff's
18 health. Toguchi, 391 F.3d at 1058; Jackson, 90 F.3d at 332.

19
20 Although plaintiff complains about his medical care, he does not
21 specify whether he is challenging a failure to provide medical care by
22 jail authorities, a delay in providing medical care, or the adequacy of
23 the medical care provided by his physicians. Plaintiff, in fact, does
24 not identify the persons (whether or not he knows their names)
25 responsible for his allegedly deficient medical care. The Court also
26 notes that plaintiff alleges that "it took C.D.C. 10 month[s] to
27 operate" on him. (Complaint at 1.) Plaintiff cannot hold the Sheriff's
28 Department liable for deficiencies in his medical care after he was

1 convicted and transferred to the custody of the California Department
2 of Corrections and Rehabilitations. For these reasons, plaintiff has
3 not sufficiently alleged a constitutional deprivation by the Sheriff's
4 Department in connection with his medical care.

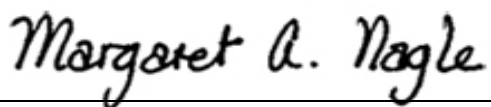
5
6 Accordingly, plaintiff's inadequate medical care claim against the
7 Sheriff's Department must be dismissed.

8
9 **CONCLUSION**

10
11 For the foregoing reasons, the Complaint is dismissed with leave
12 to amend. If plaintiff wishes to pursue this action, he is granted
13 thirty (30) days from the date of this Memorandum and Order within which
14 to file a First Amended Complaint that attempts to cure the defects in
15 the Complaint described herein. The First Amended Complaint, if any,
16 shall be complete in itself. It shall not refer in any manner to the
17 original Complaint.

18
19 Plaintiff is explicitly cautioned that failure to timely file a
20 First Amended Complaint, or failure to correct the deficiencies
21 described herein, may result in a recommendation that this action be
22 dismissed pursuant to Fed. R. Civ. P. 41(b).

23
24 DATED: July 8, 2010

25 
26 MARGARET A. NAGLE
27 UNITED STATES MAGISTRATE JUDGE
28